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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/790,494

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Bennett Clayton Ward

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11/06/2006

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EXAMINER

FORTUNA, ANA M

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 11/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,494

Applicant(s)

WARD ET AL.

Examiner

Ana M. Fortuna

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1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 17, 18, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Abed et al (7,081,423). Abed discloses a wick or non woven material (fibers bonded at spaced apart contact points) made from a bi-component fiber including polyamide as component, e.g. Nylon 6, 6, and a second component, the material allows the passage of a fluid (see abstract, column, column 1, second paragraph; column lines 36-59) the polyamide component ratio or percentage of polyamide in the wick or non –woven material (see claims 1, and 13-16, abstract, column2, liens 19-31). The fibers diameter (as disclosed in the specification), is also disclosed in the patent above (see column 3, lines 10-38); the fibers are disclosed as continuous an the non woven configuration is further detailed (see column 3, lines 58-68, and column 4, lines 52-051. For non-woven material or wick for passing fluids, e.g water and other liquids. The polyamide component volume ratio, based on the percentage of polyamide suggested in the reference above, e.g 90 to 10 % of one of the polymers with respect to 10 to 90 % of a

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second polymer, and the fiber diameter (disclosed in the present specification paragraph [00043]), inherently produce the same volume ratio. Selecting 50% of each of the components produces a ratio of 1 with respect to the components, and 0.5 with respect to the total components amount.

The burden of proof is upon applicant when inherency is stated by the PTO, see

In re Ludtke et al, 441, F2d 660; 169 USPQ 563 (CCPA 1971)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abed et al (7,081,423). Abed et al, discussed above does not disclose the non woven of their invention as made from a bi-component fiber including combinations of polyamide, and the second polyamide and additional components as claimed in claim 19, however, teach those type of bi-component fibers as non-preferred, and the method of making the non-woven from those fibers (see column 1, lines (column 1, lines 1-68, ore specific, lines 29-34; column 3, lines 39-58). It would have been obvious to one skilled in this art at the time this invention was made to have a wick made for conventional polyamide/polyester bi-component fibers, made by conventional process as disclosed in '432; selecting fiber diameter and percentage of fibers disclosed in '423, since making

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the non woven materials is recognized to be old in the art (see previous cited section of column 3).

As to claims 17, 18, 20, the term "first component" in the bi-component fiber is not limited to a core material or sheath material or to a material on the top or bottom of the fiber (in layered bicomponent fibers), the first material, e.g Nylon, is interpreted as either material of the bi-component fiber. The reference above teaches cellulose at sheath and the second polymer, which can be polyamide, will have to be the core or first polymer (see claims). The ratio of the polymers is not clearly expressed in terms of percentages by volume, however, one skilled in the art selecting a non-woven material having the same thickness and area, and made from the same percentage of fiber component, and fibers having the same components and fiber diameter can expect to result in a product having the same ratio by volume of the components. Regarding claim 21, using the product for diaper material suggests contain with body fluids or urine (see column 4, example 1). Making the wick by crimping is further disclosed (see column 9, line 12).

Response to Arguments

The allowability of claims 17-21 in the previous Office action has been withdrawn.


Rejection the claims based on new art is discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana M. Fortuna whose telephone number is (571) 272-1141. The examiner can normally be reached on 9:30-6:00 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Ana M Fortuna
Primary Examiner
Art Unit 1723

AF
November 01, 2006